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Commonwealth of Massachusetts

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Inspector General

Misappropriation of Public Property at Medfield State Hospital

December 2003

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Executive Summary

In October 2002, this Office initiated an investigation into allegations of unlawful, unethical, and inappropriate conduct on the part of certain Department of Mental Health (DMH) employees, at the Medfield State Hospital (Hospital) power plant, including the alleged misconduct of the Chief Engineer and the Assistant Chief Engineer. These allegations included unauthorized removal of public property by the Chief Engineer, the Assistant Chief Engineer, and other plant employees; the abuse of compensatory leave by the Chief Engineer; and the failure of plant employees and supervisors to properly maintain critical public safety logs required by law.

The investigation revealed that the Assistant Chief Engineer, with the approval of the Chief Engineer, removed almost 1,300 pounds of copper, brass, and copper wire belonging to the Commonwealth from the Hospital power plant. These materials were subsequently sold on two separate occasions by the Assistant Chief Engineer at a scrap yard located in the vicinity of the plant. The proceeds of these sales were purportedly used to purchase items for the personal benefit of plant employees.

The investigation also disclosed that the Chief Engineer removed a power washer belonging to the Commonwealth without authority and took it to his home. He subsequently used it at his home on personal projects. He did not return it until he was confronted by his supervisor who ordered him to return it immediately.

The investigation revealed that the Chief Engineer submitted false official time sheets to the DMH on at least five occasions showing that he was working at the plant on these particular days. However, records provided to this Office by the Foxwoods Gaming Resort show that the Chief Engineer was instead at Foxwoods during the dates and times that he purported to be on the job. The investigation also uncovered evidence that the Chief Engineer may have taken additional unauthorized compensatory leave without recording it in official records. When questioned by his superior, the Chief Engineer admitted to keeping track of compensatory leave owed to him in his mind but

refused to answer any questions on this subject during questioning by investigators from this Office.

Finally, the investigation disclosed a disturbing pattern involving a failure of plant personnel, including the Chief Engineer, to properly fill out and maintain critical public safety logbooks required by state law and Hospital regulations. This problem was allowed to happen because supervision of plant personnel by DMH officials was clearly deficient over a protracted period.

Findings

1) The Chief Engineer caused valuable metal to be removed from the Hospital and sold for scrap on two separate occasions. A full accounting of the proceeds from these sales is not available. Some of the proceeds were purportedly used to improperly benefit plant workers, including the Chief Engineer.

2) The Assistant Chief Engineer removed valuable metal from the Hospital and sold it for scrap on two separate occasions. A full accounting of the proceeds from these sales is not available. Some of the proceeds were purportedly used to benefit plant workers including the Assistant Chief Engineer.

3) The Chief Engineer took a valuable power washer belonging to the Commonwealth from the plant to his home, without authorization, used it for a period of time on personal projects, and returned it only when ordered to do so by his supervisor.

4) The Chief Engineer failed to keep proper records concerning his work attendance and use of compensatory time.

5) The Chief Engineer filed official forms showing that he was at work on at least five occasions when records show that he was, in fact, at the Foxwoods Resort Casino.

6) The Chief Engineer failed to lawfully maintain critical public safety logs required by the Department of Public Safety and the Hospital Administration and did not complete the logs in a timely manner.

7) Department of Mental Health officials failed to properly oversee the attendance and critical record keeping of supervisory employees at the Hospital plant.

Investigation Summary

Interview of the former Chief Engineer

Investigators from this Office interviewed the Chief Engineer on February 26, 2003.[1] He advised that he currently holds a First Class Engineer's license, a Master Pipe Fitter's license, and a Grade 2 Waste Water Treatment license.

The Chief Engineer advised that the Assistant Chief Engineer and a fireman approached him and suggested that they "recycle" scrap copper valves and fittings and obtain something for the plant. He stated that these individuals took the scrap metal to a local scrap company and received over $200.00 dollars for it. He advised that they subsequently purchased a television, a VCR, a Sawz-All, and saw blades with the money obtained from the sale of the scrap. These items were kept at the plant. He did not have receipts to verify these purchases.

The Chief Engineer advised that there was a second load of scrap that was removed from the plant and sold at a scrap yard. This material was copper wire left at the plant by an electrical contractor who had done work at the plant. The Chief Engineer stated that the copper wire was taken to the scrap yard by the Assistant Chief Engineer and a fireman. During the interview, the Chief Engineer produced an undated letter from the electrical contractor that purported to assign salvage rights to the left over copper wire to plant employees. The letter states in pertinent part, "[Y]ou [the Chief Engineer] and the [Assistant Chief Engineer] offered to take down the [copper wire] if we would assign rights of (sic) the copper to the guys at the boiler plant." The letter went on to state, "[W]e agreed that your guys would take responsibility to remove that [copper]." The Chief Engineer was asked whether he needed the permission of his superiors to dispose of state property. He responded by stating that he didn't "know anything about

[1] At the time of the interview, the Chief Engineer was on administrative leave from his position at Medfield. He resigned from his position on March 25, 2003.

that."[2] The Chief Engineer advised that the copper wire was sold to the scrap yard for over $200 dollars and the proceeds were used to purchase steaks for the employees and coffee for the plant. He did not have receipts to verify this amount.

The Chief Engineer further advised that he borrowed a power washer for "two weeks." He stated that he had just "closed" his swimming pool and "borrowed" the washer to clean his pool. Afterwards, he used the washer to wash his house to get it ready to paint. Because it was raining for several days, the Chief Engineer stated that it took him between "two and two and a half weeks" to return the washer.[3] This Office also questioned the Chief Engineer about an air compressor that may have been missing from the plant. The Chief Engineer advised that he had no idea what happened to it.[4]

Further, the Chief Engineer advised that some time in March 2002, he was notified by the Hospital payroll office that he had accrued too much compensatory leave time and that he needed to use some of it. He explained that according to the union contract he was allowed to accrue up to 120 hours of compensatory time and he had accrued 133 hours. The Chief Engineer refused to answer any further questions by this Office about

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[2] The Director of Facility Operations was interviewed by this Office regarding the copper wire left at the plant by the electrical contractor. He advised that he informed the Chief Engineer that this wire was the property of the state and had to remain at the plant. He characterized the disposition of the wire as unauthorized and opined that plant workers should have checked with a supervisor before disposing of the materials. The Director of Facility Operations stated that he had never seen the letter from the electrical contractor until provided a copy by this Office. He opined that this letter did not give plant workers the authority to dispose of the copper wire.

[3] It should be noted that on 10/9/02, during an interview with the Hospital Director of Facility Operations, the Chief Engineer first admitted possession of the power washer. He claimed that he borrowed it. He was then instructed by his superior to return to his home, retrieve the power washer and return it to the power plant immediately.

[4] During a previous interview with the Hospital Director of Facility Operations, another plant engineer informed the Director of Facility Operations that he had been told by one of the firemen that he had seen the Assistant Chief Engineer take the compressor. The engineer was told that the fireman observed the Assistant Chief Engineer pull his truck up to the plant's main door, place two boards from the ground to the back of the truck, roll the compressor into the truck, and drive away. This Office subsequently interviewed this fireman who failed to confirm the story provided to the Director of Facility Operations by the engineer.

his use of compensatory time.[5] The Chief Engineer was asked about whether he had any records that would show how much compensatory time he had earned that was not shown on official Hospital records. He responded by stating that he had been keeping a mental count of compensatory time.[6]

Lastly, the Chief Engineer advised that there are four logbooks used daily at the plant. Completion of two of the logbooks by the firemen and engineers respectively is required by the Department of Public Safety (DPS). The Hospital requires completion of the other two logbooks on a daily basis. One is for the firemen and the other for the engineers. The Chief Engineer advised that he was unable to get the firemen to keep consistently the firemen's logs up to date. The Chief Engineer advised that some, but not all, firemen kept good records in the log.

The Chief Engineer advised that both sets of logbooks were "supposed to be accurate." However, "some days," the Chief Engineer stated he was "too busy" to complete the engineer's logs. The Chief Engineer advised that he maintained the engineer's logs the same way his predecessors did. The Chief Engineer advised that he tried to keep the logs "by week" but often there was "too much going on in the plant." The Chief Engineer advised that he was unable to describe how often he entered information in the logs. When asked why various problems with the facility's boilers were not recorded in state required logs provided for that purpose, the Chief Engineer advised that he did not know why he did not enter information about problems with the boilers into the logs. The Chief Engineer advised that he was "the worst person for keeping logs or records."

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[5] The Director of Facility Operations has informed this Office that he interviewed the Chief Engineer about his use of compensatory time (comp. time). The Director of Facility Operations advised that he was told by the Chief Engineer that his use of comp. time had been capped by the Hospital Human Resources Department. The Chief Engineer told him that he began to track accrued compensatory time on his own.

[6] This Office interprets the above information to mean that the Chief Engineer believed that he had accumulated compensatory time beyond the 120-hour cap and decided to keep a mental tally of that time in his head. The inference to be drawn is that he would decide to take time off for the compensatory time he believed was owed to him in excess of the 120-hour cap. This was not an officially authorized use of compensatory leave by Hospital officials.

Evidence obtained at the salvage yard

Beginning in October 2002, investigators from this Office interviewed managers, plant engineers, and plant operators (firemen) at the Hospital.[7] Working from initial information obtained, investigators were able to identify a local salvage yard where used copper, brass fittings, and copper wire belonging to the Commonwealth had been taken and sold by plant employees.

On October 31, 2002, investigators from this Office traveled to the salvage yard and served a subpoena for records upon the owner. On that day, and subsequent days, investigators examined numerous boxes of receipts spanning several years and discovered two relevant receipts, signed by the Hospital Assistant Chief Engineer, for materials taken from the Hospital. One receipt, dated 8/28/01 shows that 820 pounds of copper and brass was sold to the scrap yard for $290.00 dollars. The second receipt, dated 9/26/02, disclosed that 477 pounds of copper was sold for $215.00

Interview of the former Assistant Chief Engineer

Investigators from this Office interviewed the former Assistant Chief Engineer. The Assistant Chief Engineer is currently employed as Chief Engineer at a Department of Mental Retardation power plant and was interviewed at that location.

The Assistant Chief Engineer was asked about the scrap metal that was removed from the Hospital. Specifically, he was asked if he knew who took the scrap metal to the scrap yard, and he responded "I don't know." When told that others had stated that he had taken the metal, the Assistant Chief Engineer replied: "Have them come and tell me to my face." The Assistant Chief Engineer stated that he has "no idea" who was involved in taking the scrap metal to the scrap yard. The Assistant Chief Engineer

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[7] During the initial stages of this investigation, this Office learned that management officials at the Hospital had conducted an internal inquiry regarding the above mentioned allegations. The findings from that inquiry are consistent with the findings of this Office in this matter.

stated that whoever went to the scrap yard was "under orders that they brought it over." The Assistant Chief Engineer advised that those orders came from the Chief Engineer.

The Assistant Chief Engineer advised that the proceeds from the first load of scrap bought a Sawz-All, grinding wheels, and some hand tools for the plant. The proceeds from the second load were spent on food (coffee, creamer, sugar, and steaks) and hand tools. The Assistant Chief Engineer stated that he did not know who bought the tools and food.

At this point, the Assistant Chief Engineer was confronted with the fact that there was reason to believe that he was not telling the truth about his knowledge and involvement in the removal and sale of scrap metal. The Assistant Chief Engineer insisted that he had not lied. The Assistant Chief Engineer was shown a copy of the August 28, 2001 receipt from the salvage yard showing the sale of $290.00 worth of scrap copper and brass. At the top of the receipt was written "[the name of the Assistant Chief Engineer]" and "Medfield." The Assistant Chief Engineer identified his name and signature on the receipt. At first, the Assistant Chief Engineer declined to answer questions about the receipt. The Assistant Chief Engineer thought for a few moments and stated that he "didn't recall" anything about the receipt.

The Assistant Chief Engineer then stated that he has been waiting to be interviewed for several months. The Assistant Chief Engineer stated that "the union" attorney instructed him to "be vague," "not incriminate" himself, and call the union attorney when an attempt was made to interview him. The Assistant Chief Engineer then stated "I have no guilt about what we did." The Assistant Chief Engineer then admitted: "I took the scrap with another guy. I bought the tools with another guy." The Assistant Chief Engineer advised: "No money left the plant." When asked who the "other guy" was, the Assistant Chief Engineer stated that "the union" advised him not to make anybody else "look bad" because then he would have a "weak defense." The Assistant Chief Engineer advised that he was in a "precarious position." Eventually, the Assistant Chief Engineer identified a fireman at the plant as the other person who accompanied him on the two sales of the scrap metal.

The Assistant Chief Engineer stated that the first load consisted of scrap metal that had been put into the "dumpster" behind the plant.[8] People from all over the Hospital facility would bring trash to the "dumpster." The Assistant Chief Engineer advised that the power plant staff would take the scrap copper and brass out of the dumpster and put it into a barrel in the plant. The Assistant Chief Engineer advised that when the barrel was full, the Chief Engineer told him to take it to the scrap yard. The Assistant Chief Engineer advised that the Chief Engineer told him where to take the scrap (i.e., which scrap yard to use). The Assistant Chief Engineer advised that he took two loads to that scrap yard and never took any loads anywhere else. He advised that the second load taken to the scrap yard consisted of copper wire left at the plant by an electrical contractor.

The Assistant Chief Engineer denied that he was involved in the theft of a missing air compressor from the plant.

When asked by this Office if, in his opinion, the Chief Engineer took more leave time than he was entitled to take, the Assistant Chief Engineer advised: "Don't know." The Assistant Chief Engineer advised that he went to the Hospital's administrative office and asked about the Chief Engineer's use of leave time. He stated that he was informed that the Chief Engineer was "using his comp. time." The Assistant Chief Engineer stated that the Administration "knew all about it." The Assistant Chief engineer explained that he and the Chief Engineer went to see the Director of Facility Operations regarding the Chief Engineer's use of compensatory time. He advised that the Director told the Chief Engineer to keep his compensatory time slips [instead of filing them officially] and as long as the plant was "covered," he could take the compensatory time

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[8] We interviewed the Director of Facility Operations who confirmed that dumpsters were periodically placed at various points around the Hospital "campus." The Director stated that, in his view, materials placed in dumpsters were the property of the Commonwealth and employees should not remove said materials and sell them for their own benefit. The Director could not confirm that a policy existed which would clarify for employees the proper way to dispose of these materials. The Director stated that while "conversations" had been held on this topic among the management team, he does not believe that these conversations were ever formalized into a policy.

owed to him "off the books." The Assistant Chief Engineer explained that the Director was authorizing the Chief Engineer to take days off without taking official leave.[9]

The Assistant Chief Engineer advised that when he asked the Chief Engineer about his usage of compensatory time, the Chief Engineer told the Assistant Chief Engineer that he kept his time "all up here" and pointed to his head. The Assistant Chief Engineer advised that if the Chief Engineer had not taken the compensatory leave he was owed "off the books," "He would have been screwed." The Assistant Chief Engineer stated the Chief Engineer was owed more time than he "put in for." He also stated that, eventually, the Chief Engineer "gave up" trying to get the overtime he was owed through the Administration.

The Assistant Chief Engineer advised that the Chief Engineer was not a "paper man." By this, the Assistant Chief Engineer explained, that he meant the Chief Engineer was not able to properly complete the necessary paper work around the plant. The Assistant Chief Engineer stated that he believed that the Chief Engineer was a good engineer but would often "screw up" paperwork while trying to complete it. The Assistant Chief Engineer stated that often the Assistant Chief Engineer had a harder time completing paperwork if the Chief Engineer had attempted to complete it first than if he had done it himself from the beginning.

Analysis of Log Books

On October 15, 2002, investigators from this Office and a representative of the Department of Public Safety (DPS) conducted a tour of the Hospital power plant. During the tour, the DPS employee removed certain logbooks (logs) from the plant and

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[9] This Office interviewed the Director of Facility Operations concerning his alleged authorization to the Chief Engineer that he take compensatory leave "off the books." The Director denied the allegation and stated that the Chief Engineer was never authorized by him to take compensatory leave "off the books." He advised that upon learning that the Chief Engineer had accrued more compensatory leave than he was allowed under the union contract, he informed him that he was to begin taking compensatory leave to reduce the number of hours accrued, and in the future was to put in for overtime pay rather than use compensatory leave. He advised that the Chief Engineer made the decision to take compensatory leave "off the books" on his own.

provided those logs to this Office at our request. One of these logs, the Engineer's Log, is provided to the Hospital plant by the DPS. State Law requires that the Engineer's Log be completed on a daily basis. An initial examination of the log on-site revealed that it had not been updated for 13 days.

Later, this Office conducted a review of this log for the period July 2000[10] through October 2, 2002 (the last day the Chief Engineer updated the logs). This review disclosed that the Engineer's log did not mirror important data contained within the log required by the Hospital regulations (the so-called Fireman's log). It is apparent that it was the practice of the Chief Engineer to update the Engineer's log on an infrequent basis leaving out critical and required information.

This conclusion was reached by noting that the Engineer's log had long stretches of incomplete information on each page except for the date, the Chief Engineer's initials, and a check mark indicating that the Chief Engineer had reviewed the Operator's log (another log provided by the Department of Public Safety and required to be completed daily).[11] The Chief Engineer's initials were written in a manner that suggests a "rote" or repetitive writing style. This indicates that many days worth of entries were completed in one sitting. It was further noted that the Engineer's log was often completed in the same color pen for an entire month, suggesting again that the entire month's log entries were completed in a single sitting.

It was also observed that often the section of the Engineer's log entitled: "Notes of Boiler and/or Turbine operation as well as note of repairs made, boilers washed, visits of State or Insurance Inspectors" would be left blank for periods up to six consecutive months. At the same time, the "Fireman's log" (whose completion was required by Hospital regulations) noted major issues with the boilers including flameouts and frequent service calls which should likewise have been reported in the Engineer's log.

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[10] The date the Chief Engineer assumed that role for the Hospital plant.

[11] The DPS Operator's log was not used by plant workers at the Hospital power plant. The "fireman's log" was used in its place. If the Chief Engineer had reviewed the Hospital "fireman's" log, he would have noticed that he was not recorded as being present most days.

The fact that critical events noted in the Hospital Fireman's log are not recorded in the Engineer's log supports the conclusion that the log was not completed contemporaneously, but rather in a "batch" and further, that the Engineer's log lacks accuracy.

In accordance with the provisions of Massachusetts General Laws, Chapter 146, Section 51, the DPS requires both engineers and operators (also known as "firemen") of steam boilers to maintain blue Record Books (the Operator's and Engineer's logs discussed above) issued by the DPS. Both the operator and the engineer (if there are two assigned to a shift) must record relevant data in their respective DPS logs. These Record Books are meant to serve as the official logs for critical public safety information about the plant and plant operations on a daily basis. Regardless of any other logbooks which may be required by the facility, the proper maintenance of the DPS logs is a fundamental duty incumbent on both operator and engineer respectively. According to a DPS inspector contacted by this Office, completion of the Hospital's "fireman's log" does not satisfy the DPH requirement of completion of the DPH provided Operator's log.

However, the review of both Engineer's logbook (required by DPS) and the "Fireman's" logbook (required by the Hospital) indicates that these logbooks were not properly maintained. Often, the logbooks would be blank for several consecutive shifts. A comparison of the Chief Engineer's official attendance records submitted to the Hospital and the Hospital's "Fireman's" log book for the period of July 2000 to September 2002 shows that the Chief Engineer claimed to be working at the plant on 477 days. However, the fireman's log substantiated his presence on the job for only 190 days.

Trips to Foxwoods

This Office obtained records from Foxwoods Resort Casino[12] (Foxwoods) pertaining to the Chief Engineer. According to these records, a Foxwoods Wampum Card[13] issued in the name of the Chief Engineer was used at Foxwoods on twelve different dates. On five of the dates and times that this card was used, official Hospital attendance records show that the Chief Engineer was working at the Hospital plant.[14] During all relevant times, the Chief Engineer was scheduled to work first shift Monday through Friday.[15]

According to a representative of Foxwoods, in order to redeem points earned on a "Wampum Card," the holder must show positive ID to a Foxwoods' employee. The times shown on the Foxwoods' records reflect time consistent with the Chief Engineer's regular workday. The conclusion is that the Chief Engineer was at Foxwoods on dates and times that he reported on his attendance records that he was at work in the Hospital.

It should also be noted that the Chief Engineer was questioned by this Office concerning trips to Foxwoods. The Chief Engineer stated that he went to Foxwoods approximately three times during the workweek but claimed that he always took appropriate leave. He claimed that he took vacation leave, personal leave, and/or compensatory time.

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[12] The proper legal name for Foxwoods is the Mashantucket Pequot Gaming Enterprise doing business as the Foxwoods Resort Casino. Foxwoods is located in Mashantucket, Connecticut.

[13] Wampum Cards are issued by Foxwoods to frequent gamers or anyone else who meets their eligibility requirements. If a player uses a Wampum Card, Foxwoods can track their gaming and purchasing habits and money spent in the resort. Frequent gamers are allowed to redeem points accrued for accommodations, tickets to shows, food and drinks, or other items or services in the resort or discounts at local participating merchants.

[14] These dates are 1/29/01, 7/5/02, 8/21/02, 8/22/02, and 11/4/02.

[15] According to those we spoke with, depending on what period you examine, the first shift was scheduled between 6:00 a.m. to 2:00 p.m. or 6:30 a.m. to 2:30 p.m. This small difference has no effect on our analysis.

Interview of the Hospital Director of Facility Operations

On July 18, 2003, the then Director of Facility Operations[16] (the Director) for the Hospital was interviewed and advised that in May 1998 he was given the additional responsibility to manage facilities operations at the Department of Mental Health facility at Westboro, Massachusetts (the Westboro facility). He advised that from that point on, he split his time between both facilities but spent the majority of his time at the Westboro facility. He stated that he spent three days a week at the Westboro facility and two days a week at the Hospital. He advised that he was not directly responsible for supervising the Hospital power plant employees but was "ultimately responsible" for the actions of all his subordinates. He advised that prior to February 2002 the Director of Utilities at the Hospital was responsible for direct supervision of Hospital plant employees. The Director advised that he could not recall whether the Director of Utilities was required to review logs completed by plant employees. The Director suggested that this Office contact the Personnel Director at the Westboro facility[17] and obtain the Director of Utilities' job description.[18]

In February 2002, the Director of Maintenance acquired direct responsibility for supervising the Hospital plant employees. The Director advised that the new supervisor also had supervision responsibilities at the Westboro facility. He opined that the Director of Maintenance's physical oversight of the Hospital plant "probably" did not occur consistently. According to the Director, when the Director of Maintenance took

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[16] This individual's current title is the Director of Engineering and Facilities Management for the Department of Mental Health.

[17] Medfield's Personnel Department has been transferred to Westboro.

[18] Records provided by the Department of Mental Health reveal that the Director of Utilities was required by his job performance criteria to, "Review and approve all required documentation to ensure that all compliance issues are followed and met." Moreover, the materials provided required this employee to monitor the attendance of subordinates.

over direct supervision of Hospital power plant employees, review of the Hospital plant logs and reports was, "implicit in taking on that responsibility."[19]

The Director advised that he did not regularly check on the Hospital plant workers. He advised that he "trusted them a lot" because early in his relationship with the Chief Engineer and the Assistant Chief Engineer, they did "a lot of work" at the plant.

[19] The Director advised that he was "not sure" that the Director of Maintenance's formal job description had been changed to reflect these additional responsibilities. The Director also advised that the Director of Maintenance had responsibility for two sites (facilities in Medfield and Westboro) and was "stretched" by adding these additional duties.

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Conclusions

Removal and sale of scrap metal

This investigation has revealed that a total of nearly 1,300 pounds of copper, brass, and copper wire was removed on two occasions from the Hospital by plant employees, including the Assistant Chief Engineer.[20] These materials were subsequently sold at a nearby scrap facility, and the proceeds of the sales were purportedly used for the personal benefit of plant employees. All of this was done with the authorization or concurrence of the Chief Engineer. The Hospital had no written policy regarding discarded dumpster contents. However, in order to avoid the dumpsters from becoming a conduit for removal of valuable items, state employees should be prohibited from removing state property from dumpsters and trash receptacles.

The unauthorized removal of these materials from the Hospital plant, their subsequent sale, and the use of the proceeds purportedly for the personal benefit of plant employees appears to be a violation of the state's Conflict of Interest Law, M.G.L. c. 268A, §23(b)(2).[21] This statute prohibits public employees of a state agency from using their official positions to obtain for themselves unwarranted privileges of substantial value.[22] As the value of the metals sold to the salvage company exceeded $50.00, this statute appears to have been violated.

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[20] This Office received information during interviews of plant employees that as many as five trips to local scrap yard(s) may have occurred. However, this Office was able to substantiate two such trips.

[21] This statute reads as follows: "No current officer or employee of a state, county or municipal agency shall, knowingly, or with reason to know:

> (b)(2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

[22] "Substantial value" has been defined by the Massachusetts Appellate Court as being $50.00 or more.

Further, any valuable metals removed from the plant should also have been disposed of in accordance with the surplus property procedures contained in 802 C.M.R. §3.07. This regulation states, in relevant part:

> (1) If an Agency determines that Property has insufficient value, it must receive formal written authority from the State Surplus Property Office (SSPO) prior to disposition...
>
> 3) If the Property is sold, the Agency will sell the Property at the best obtainable price following Agency bid procedures. The purchaser must pay by certified check, payable to the Commonwealth of Massachusetts, before obtaining possession of the Property. Agencies must send all checks to the SSPO.

In addition, by converting state property into cash and then purportedly buying a TV, VCR, tools, and food products for the plant employees, the Chief Engineer and the Assistant Chief Engineer appear to have violated 802 C.M.R. §3.07 as well.

Inappropriate Offer and Agreement with Electrical Contractor

By meeting with the electrical contractor and requesting the "salvage rights" to the left over copper wire, the Chief Engineer and Assistant Chief Engineer were requesting something of value for themselves. Their actions in this matter appear to have violated the State's Conflict of Interest Law, M.G.L. c. 268A, §23(b)(2).[23] As mentioned above, this statute prohibits public employees of a state agency from using their official positions to obtain for themselves unwarranted privileges of substantial value. The unauthorized sale of this material likewise appears to be a violation of 802 CMR §3.07.

Use of state equipment for personal benefit

The Chief Engineer's use of the power washer at his home may be a violation of the state's Conflict of Interest Law. The investigation revealed that the Chief Engineer removed the power washer from the premises without permission, used it for his personal benefit, and only returned it when confronted by his supervisor.

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[23] Supra, note 21.

According to the Director, the power washer is an Ex-Cell model XHP23. According to an individual with the requisite knowledge contacted by this Office, a representative of a small engine repair shop, this unit can be purchased new for between $400 and $430. M.G.L. c. 268A, 23(b)(2) prohibits an employee of a state agency from using his/her official position to secure for himself/herself unwarranted privileges of substantial value.[24]

The personal use of the power washer appears to fall within the proscriptions of this section, which is generally enforced by the State Ethics Commission.

Abuse of leave time by the Chief Engineer

The Chief Engineer failed to follow explicitly stated attendance requirements and union contract provisions in his use of compensatory leave. The employee contravened the terms of his employment and his union contract by unilaterally deciding to keep track of his time mentally, and taking that time at will, without prior approval from his superiors.

According to the Personnel Director at the Westboro facility, each and every employee, including the Chief Engineer, is given a letter which explicitly states the terms and conditions of employment, including the scheduled hours that the employee is expected to be at the facility. In addition, the Massachusetts Organization of State Engineers and Scientists (MOSES) contract, which the Chief Engineer was obliged to follow, states that an employee initiates the process by filing a request for compensatory time with the Hospital and having that request granted. There is no provision in either the employment letter or union contract permitting an employee to take unauthorized leave time or for a supervisor to permit such action.

In unilaterally coming and going without answering to anyone, the Chief Engineer was violating both union contract provisions and his terms of employment. Unfortunately, there is no way to accurately quantify the amount of time improperly taken. Given the failure to maintain accurate logs, and the generally shoddy record keeping by

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[24] Id.

supervisors and employees at the plant, there are few reliable records (the records obtained from Foxwoods as an example) upon which to build a case for legal action against the Chief Engineer for failure to work as scheduled and/or the submission of false time sheets. This appears to be a consequence of the poor supervision of the Hospital power plant employees by DMH.

It is this Office's conclusion that at some point the Chief Engineer became a "low show" employee. The five days he was at Foxwoods instead of at work confirms a disturbing pattern and practice on the Chief Engineer's part of claiming to be at work when he was, in fact, elsewhere. This Office believes that the Chief Engineer's submission of false time sheets while spending five workdays at Foxwoods amounts to a violation of the State's Conflict of Interest Law.

A state employee may not use his or her position as a supervisor to take leave time to which he or she is not entitled. If he/she does act as such, that employee runs the risk of violating the state's Conflict of Interest Law, M.G.L. c. 268A, 23(b)(2). As mentioned earlier in this report, the conflict of interest law prohibits a public employee of a state agency from using his/her official position to secure for himself/herself unwarranted privileges of substantial value.[25]

The ability to leave the workplace because one is a site supervisor without taking appropriate leave time clearly falls within the proscriptions of this section which is generally enforced by the State Ethics Commission.

Lack of supervision of state employees

This Office believes that the inappropriate conduct chronicled in this report was due, in part, to a failure to properly supervise the employees at the Hospital plant. This Office is cognizant of the fact that some members of management at the Hospital facility were faced with the difficult challenge of overseeing both the Hospital and Westboro facilities. We also note that there were problems inherent in the 2002 decision to close the

[25] Id.

Hospital facility and transfer its core functions to the Westboro facility. Nevertheless, that challenge did not relieve those managers of their responsibility to properly supervise the staff remaining at the Hospital. This investigation has established that the staff at the Hospital plant was not properly supervised by the Hospital management. The investigation was unable to conclusively establish that the Chief Engineer was regularly taking unrecorded leave, except for the five days at Foxwoods. Nonetheless, it seems clear that the Chief Engineer's apparent unauthorized use of leave would not have occurred but for lack of direct supervision by Hospital management. State managers must properly supervise staff when scattered at geographically dispersed facilities regardless of the other pressing issues before them.

Moreover, Hospital managers failed to inspect the logs as required by Hospital Administration. The failure to ensure that the appropriate logs were regularly maintained presented an unacceptable public safety risk. Managers must ensure that proper records are kept not only at the Hospital plant but also at all facilities managed by the Department of Mental Health.

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Recommendations

Department of Mental Health

The Department of Mental Health should:

- Create internal controls that require managers and supervisors to personally review logs and reports filed by their subordinates on a regular basis;

- Institute proper inventory controls to accurately log all state owned equipment at each facility and increase accountability;

- Hold managers and employees accountable (by means of disciplinary penalties) for the failure to maintain complete, accurate, and correct time and attendance records, logs, reports, and other paperwork required by the Commonwealth or DMH Administration. This accountability must include the necessity that all these records must be likewise maintained in a timely manner;

- Promulgate a written policy to all staff persons clarifying that scrap materials which have residual value should be disposed of in accordance with 802 CMR §3.07 and the proceeds returned to the Commonwealth and not employees of the agency;

- Sponsor training by the State Ethics Commission for all DMH faculty and staff to educate them regarding the provisions of the state's Conflict of Interest Law; and

- Ensure that managers at DMH should regularly visit geographically separated sites under their responsibility to ensure compliance by staff with agency requirements and applicable state laws. Special attention should be paid to the attendance records of all subordinate employees.

Department of Public Safety

The Department of Public Safety should review this matter to determine whether license revocation proceedings should be instituted against the licenses held by the former Chief Engineer and former Assistant Chief Engineer. The Department of Public Safety should also review the facts of this case and decide whether more frequent oversight by its inspectors (including frequent reviews of power plant logs) might have prevented the risks to public safety detailed in this report. Also, the events described by this report clearly show the importance of proper completion of state mandated logbooks.

Department of Mental Retardation

A copy of this report will be forwarded to the Department of Mental Retardation (DMR). DMR should review this matter carefully and consider whether the former Assistant Chief Engineer, who now serves as a Chief Engineer of a DMR facility, is qualified to hold a position of responsibility and supervision at DMR.

State Ethics Commission

A copy of this report will be forwarded to the State Ethics Commission for its consideration of whether the apparent violations of the State's Conflict of Interest Law should be further investigated and appropriate sanctions imposed.

Acknowledgement

This Office would like to acknowledge the full cooperation, assistance, and support of the Interim Commissioner of the Department of Public Health and his staff concerning this investigation. This Office would also like to thank the Department of Public Safety and the Department of Health and Human Services for the assistance provided to this Office in connection with this matter.